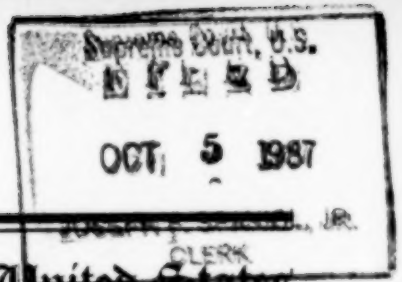


No. 87-416



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**In the Supreme Court of the United States**

OCTOBER TERM, 1987

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UNITED STATES CATHOLIC CONFERENCE AND  
NATIONAL CONFERENCE OF CATHOLIC BISHOPS,  
PETITIONERS

v.

ABORTION RIGHTS MOBILIZATION, INC., ET AL.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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**BRIEF FOR THE FEDERAL RESPONDENTS**

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### QUESTION PRESENTED

Whether the order holding petitioners in contempt for failure to comply with a discovery order should be set aside on the ground that the plaintiffs lack standing to bring the underlying lawsuit.

## TABLE OF CONTENTS

	Page
Opinions below .....	1
Jurisdiction .....	1
Statement .....	1
Discussion .....	6
Conclusion .....	15

## TABLE OF AUTHORITIES

### Cases:

<i>Allen v. Wright</i> , 468 U.S. 737 (1984) .....	3, 7, 8, 10, 11-12, 15
<i>American Society of Travel Agents, Inc. v. Blumenthal</i> , 566 F.2d 145 (D.C. Cir. 1977), cert. denied, 435 U.S. 947 (1978) .....	11
<i>Baker v. Carr</i> , 369 U.S. 186 (1962) .....	4, 7, 9, 10
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983) .....	8
<i>Gladstone, Realtors v. Village of Bellwood</i> , 441 U.S. 91 (1979) .....	7, 14
<i>Heckler v. Chaney</i> , 470 U.S. 821 (1985) .....	12
<i>Keane v. Baker</i> , Civ. No. 86-588E (W.D.N.Y. Mar. 6, 1987) .....	11
<i>Laird v. Tatum</i> , 408 U.S. 1 (1972) .....	12
<i>O'Shea v. Littleton</i> , 414 U.S. 488 (1974) .....	7
<i>Simon v. Eastern Kentucky Welfare Rights Organization</i> , 426 U.S. 26 (1976) .....	8-9, 10
<i>United States v. Richardson</i> , 418 U.S. 166 (1974) .....	12
<i>United States v. SCRAP</i> , 412 U.S. 669 (1973) .....	15
<i>United States v. United Mine Workers</i> , 330 U.S. 258 (1947) .....	7
<i>Valley Forge Christian College v. Americans United for Separation of Church &amp; State, Inc.</i> , 454 U.S. 464 (1982) .....	9, 10
<i>Warth v. Seldin</i> , 422 U.S. 490 (1975) .....	7
<i>Wimpisinger v. Watson</i> , 628 F.2d 133 (D.C. Cir.), cert. denied, 446 U.S. 929 (1980) .....	11

## Constitution and statutes:

	Page
U.S. Const. Art. III .....	6, 7, 10
Internal Revenue Code (26 U.S.C.):	
§ 170 .....	2
§ 501(c)(3) .....	2, 3, 9, 13, 14
§ 6103 .....	4
§ 6212 .....	12
§ 6213 .....	12
§ 6532 .....	12
§ 7421(a) .....	13
§ 7422 .....	12
§ 7428 .....	13, 14
§ 7801(a) .....	12
§ 7805(a) .....	12
§§ 8001-8023 .....	12
28 U.S.C. (& Supp. III) 1292(b) .....	4
28 U.S.C. 1346 .....	12
28 U.S.C. 1491 .....	12-13
28 U.S.C. (& Supp. III) 2201 .....	13

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-43a) is reported at 824 F.2d 156. The opinion of the district court holding petitioners in contempt (Pet. App. 44a-51a) is reported at 110 F.R.D. 337. The opinions of the district court denying the motions to dismiss (Pet. App. 54a-92a, 93a-102a) are reported at 544 F. Supp. 471, and 603 F. Supp. 970, respectively.

## JURISDICTION

The judgment of the court of appeals was entered on June 4, 1987. A petition for rehearing was denied on July 30, 1987 (Pet. App. 103a-104a). The petition for a writ of certiorari was filed on September 11, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. The non-federal respondents, various individuals and tax-exempt organizations that support the availability

of legal abortion, brought this suit in the United States District Court for the Southern District of New York, seeking to compel the Secretary of the Treasury and the Commissioner of Internal Revenue to revoke the tax exemption of the Roman Catholic Church.<sup>1</sup> The complaint alleged that the Church has engaged in lobbying activity and participated in political campaigns in opposition to legalized abortion, using tax-deductible contributions. It further alleged that the Secretary and the Commissioner are aware that these activities exceed the limitations placed by the Internal Revenue Code<sup>2</sup> on organizations classified as tax-exempt under Section 501(c)(3), but have failed to enforce those limitations against the Church.<sup>3</sup> The plaintiffs sought a declaration that both the political activities of the Roman Catholic Church and "the inaction by the Secretary and the Commissioner" violate the Code and

<sup>1</sup> The suit also named as defendants the petitioners, the United States Catholic Conference (USCC) and the National Conference of Catholic Bishops (NCCB), which are the two principal national organizations of the Roman Catholic Church in the United States. The district court, however, ruled that the complaint failed to state a claim against the petitioners because they were entitled to rely upon tax exemptions granted by the government. Accordingly, the petitioners were dismissed as defendants. Pet. App. 84a, 91a.

<sup>2</sup> Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

<sup>3</sup> Section 501(c)(3) of the Code provides an exemption from federal income tax for an entity "organized and operated exclusively for religious, charitable, \* \* \* or educational purposes, \* \* \* no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h) [which details the permissible limits of expenditures to influence legislation]), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." Section 501(c)(3) organizations are exempt from income tax, and contributions made to them are generally tax-deductible. See I.R.C. § 170.

Constitution. The plaintiffs also sought an injunction directing the Secretary and Commissioner to revoke the tax exemptions of the Church,<sup>4</sup> to assess and collect all taxes thereby due, and to notify donors that contributions to the Church are not tax-deductible. Pet. App. 4a-5a, 60a-61a; C.A. App. 22-23.

2. The district court denied a motion to dismiss the suit for lack of standing (Pet. App. 54a-92a), and it subsequently denied a renewed motion to dismiss on that ground in light of this Court's intervening decision in *Allen v. Wright*, 468 U.S. 737 (1984) (Pet. App. 93a-102a). The court held that certain of the plaintiffs have standing to proceed against the federal respondents under one or both of two theories.

First, the court held that both the individual plaintiffs who are members of the clergy and the church-affiliated Women's Center for Reproductive Health have "establishment clause standing" (Pet. App. 62a-69a). The court stated that the clergy members "must counsel those in their care in accordance with religious laws that command consideration of abortion as the morally required response to pregnancy" (*id.* at 68a (footnote omitted)), and that the Women's Center "provides guidance to women in decisionmaking on issues pertaining to family life, including childbearing" (*ibid.*). The court characterized the Church's tax exemption as "tacit government endorsement" of the Church's position on abortion, and concluded that it caused a "discrete spiritual injury" to some of the plaintiffs because "official approval of an orthodoxy antithetical to their spiritual mission diminishes their position in the community, encumbers their calling in life, and obstructs their ability to communicate effectively their religious message" (*id.* at 67a-68a).

<sup>4</sup> Petitioners hold an "umbrella" exemption under Section 501(c)(3), covering tens of thousands of individual entities (including dioceses, parishes, schools and hospitals), which are part of or affiliated with the Roman Catholic Church in the United States.



Second, the district court held that all of the individual plaintiffs and three of the advocacy organizations, as representatives of their members, have "voter standing," within the meaning of *Baker v. Carr*, 369 U.S. 186 (1962), to challenge "alleged government action which has improperly biased the political process against the discrete group to which they belong" (Pet. App. 72a). In the district court's view, continuation of the tax exemption "distorted" the electoral process by allowing tax deductions for donations to the Church but not for donations to politically-active abortion rights groups (*id.* at 73a). The court suggested that "[a]n injunction against that discriminatory policy will restore the proper balance between adversaries in the abortion debate" (*ibid.*).

On both occasions that it denied motions to dismiss, the district court declined to certify the standing question for interlocutory appeal under 28 U.S.C. (& Supp. III) 1292(b). Subsequently, the court of appeals denied the government's petition for a writ of mandamus or prohibition directing the district court to dismiss the complaint for lack of standing. On October 6, 1986, this Court denied the government's petitions for a writ of certiorari to review the court of appeals' order, and, alternatively, for a writ of mandamus directing the district court to dismiss the action (Nos. 86-157 and 86-162).

3. The plaintiffs are currently seeking, through subpoenas and other process, detailed discovery of information concerning the Church's tax status and its alleged lobbying and electioneering activities. To that end, they have requested documents from petitioners and from the Internal Revenue Service. See C.A. App. 164-169, 200-201.<sup>5</sup> The documents requested from petitioners are

<sup>5</sup> The federal respondents have maintained that disclosure of much of the information requested from the government is precluded by Section 6103 of the Code, which prohibits government disclosure of tax returns and confidential return information, except as specifically provided by statute. See C.A. App. 182-195.

voluminous and include the following: records relating to the formulation and interpretation of the bishops' position on abortion; records relating to church officials' contacts with presidential candidates and other candidates for public office; information regarding financial relationships between Catholic institutions and right-to-life organizations; and returns, records, and correspondence submitted by petitioners to the Internal Revenue Service (*id.* at 164-169). The plaintiffs have indicated their intent to depose cardinals and other high-ranking church officials who they believe may be involved in these activities (*id.* at 200-201).

The district court narrowed the discovery requests in limited respects, but otherwise ordered petitioners to comply with them (Pet. App. 48a-49a). Petitioners subsequently advised the court that they "cannot, in conscience, comply with the subpoenas" (*id.* at 44a). On May 8, 1986, the court granted the plaintiffs' motion to hold petitioners in civil contempt for noncompliance with the court's discovery order, and it imposed on each of the petitioners a fine of \$50,000 per day, to begin on May 12, 1986, and to continue "for each day that the USCC/NCCB continues to defy the court's order" (*id.* at 50a-51a). That order was stayed pending appeal, and the stay remains in effect pending this Court's disposition of the petition for a writ of certiorari.

4. Petitioners appealed the contempt order, arguing that it should be set aside because the district court lacks jurisdiction over the underlying action because of the plaintiffs' lack of standing. A divided panel of the court of appeals affirmed (Pet. App. 1a-43a). The majority held that petitioners, as non-party witnesses, "may challenge their contempt adjudication only on the limited ground that the District Court lacks even colorable jurisdiction over the underlying lawsuit" (*id.* at 18a), and may not seek to have the contempt order expunged by bringing "a full-scale challenge to the correctness of the district court's exercise of such jurisdiction" (*id.* at 10a). Applying that test,

the majority concluded that the trial court's assumption of jurisdiction rests on a sufficient basis to support the contempt judgment. The majority found that the plaintiffs' suit "is more than a citizen effort to have the tax laws enforced and more than a taxpayer effort to complain of tax exemptions of others that might violate the Establishment Clause" (*id.* at 19a). Rather, the majority concluded, the plaintiffs have asserted "at least a colorable basis" (*id.* at 20a) on which to predicate standing by "claim[ing] direct, personal injury arising from the fact that the federal defendants' failure to enforce the political action limitations of section 501(c)(3) has placed the plaintiffs at a competitive disadvantage with the Catholic Church in the arena of public advocacy on important public issues" (*id.* at 19a).

Judge Cardamone dissented, stating that the court should have decided whether the district court's assumption of jurisdiction over the suit was correct, not merely whether it was "colorable" (Pet. App. 21a-41a). The dissent explained that, if the petitioners were correct that there was no standing, then the majority's ruling had the effect of forcing them to comply with an order of the district court that "exceeded the jurisdictional limits of Article III" (*id.* at 29a). Moreover, the dissent continued (*id.* at 33a), "[t]o emasculate the witnesses' right to appeal by so narrow a view of what an appellate court may review, effectively deprives these contemnors of any meaningful appeal."

#### DISCUSSION

In affirming the district court's contempt order on the ground that the court had a "colorable" basis for jurisdiction, the court of appeals has permitted the district court to exceed the Article III limitations on its jurisdiction. Even under the limited scope of review of the standing question adopted by the court of appeals, we believe that the contempt order must be vacated because it is clear beyond doubt that the plaintiffs lack standing and therefore that the district court lacks jurisdiction to entertain the underlying action. For the reasons explained in detail

in our previous submissions to this Court (Nos. 86-157 and 86-162), the district court's order upholding the plaintiffs' standing is so directly contrary to this Court's controlling precedent that it cannot provide even a "colorable" basis for jurisdiction over the lawsuit. Accordingly, the court of appeals, presented with the issue in a direct appeal that is not burdened by the restrictions that attend the issuance of an extraordinary writ, should have granted petitioners' request to vacate the contempt order because of lack of jurisdiction over the underlying lawsuit. See *United States v. United Mine Workers*, 330 U.S. 258, 293 (1947).

The court of appeals' error in finding a "colorable" basis for standing involves fundamental principles of justiciability established by the Constitution and by this Court. Moreover, the continuation of this lawsuit threatens to produce burdensome discovery that will intrude deeply into the internal policies and practices of the Internal Revenue Service and the Church, thereby interjecting the judiciary into sensitive matters beyond its province. Accordingly, we believe that it is appropriate for the Court to grant certiorari to review the court of appeals' decision.

1. It is well established that in order to have standing to maintain a lawsuit a plaintiff must "allege[] such a personal stake in the outcome of the controversy" as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf" (*Warth v. Seldin*, 422 U.S. 490, 498-499 (1975) (emphasis in original), quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). The "core component" of standing, derived directly from the "cases" or "controversies" requirement of Article III of the Constitution, requires the plaintiff to "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief" (*Allen v. Wright*, 468 U.S. 737, 751 (1984)). That injury cannot be an "abstract" one (*O'Shea v. Littleton*, 414 U.S. 488, 494 (1974)); it must be "distinct and palpable" (*Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979) (quotation omitted)).



In addition to these constitutional requirements, this Court has also recognized that the standing doctrine embraces certain prudential limitations on the exercise of federal jurisdiction, including "the rule barring adjudication of generalized grievances more appropriately addressed in the representative branches" (*Allen v. Wright*, 468 U.S. at 751). A federal court "is not the proper forum" to press general complaints about the way in which government goes about its business" (*id.* at 760, quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983)).

On several occasions in recent years, the Court has reaffirmed these basic standing principles and emphasized that they ordinarily deny access to the federal courts by plaintiffs who seek to litigate the claim that the government is failing to enforce its laws—in particular, laws relating to tax exemptions—against a third party. Most recently, in *Allen v. Wright*, *supra*, the Court held that the parents of black public school children lacked standing to challenge the tax-exempt status of allegedly discriminatory private schools. The Court held that the claim that blacks were denigrated by government recognition of those schools' tax exemptions was too abstract to be judicially cognizable; rather, such an injury could confer standing only if the stigma was suffered "as a direct result of having personally been denied equal treatment" (468 U.S. at 755). The Court also rejected the attempt to base standing on the assertion that the tax-exempt private schools impaired the desegregation of public schools. The Court explained that the line of causation between the government's enforcement of the tax laws and the desegregation of plaintiffs' schools was far too weak; it was sheer speculation whether the withdrawal of tax exemptions would have any effect on school desegregation (*id.* at 758).

In *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976), this Court also found no standing to litigate whether the government was properly enforcing

the tax laws against other persons. A group of indigent plaintiffs had sued Treasury officials to challenge a Revenue Ruling that allowed nonprofit hospitals to qualify for tax exemption under Section 501(c)(3) even if they provided no more than emergency room services to the indigent. This Court held that the plaintiffs' allegations of injury in the form of the denial of services by these hospitals did not confer standing because it was "purely speculative" whether the alleged injury could fairly be traced to the government's tax enforcement action "or instead result[s] from decisions made by the hospitals without regard to the tax implications" (426 U.S. at 42-43). And in *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464 (1982), the Court held that the plaintiffs lacked standing to challenge the conveyance of surplus federal property to sectarian institutions because they "fail[ed] to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees" (454 U.S. at 485 (emphasis in original)). These decisions demonstrate that the plaintiffs in the instant case lack standing to challenge the tax exemption of the Catholic Church.

2. The court of appeals' holding that there is a "colorable" basis for believing that the plaintiffs have "voter standing," under *Baker v. Carr*, 369 U.S. 186 (1962), is clearly mistaken.<sup>6</sup> The *Baker* plaintiffs lived in a

<sup>6</sup> The court of appeals rested its finding of a "colorable" basis for standing solely on the "voter standing" rationale advanced by the district court (see Pet. App. 19a). As explained in further detail in our petition for certiorari in No. 86-157, the district court's "establishment clause standing" holding, which the court of appeals did not address, is unsupportable. The claim by some of the plaintiffs that their religious mission and values, which favor the continuation of legalized



"disfavored" county, one with a "gross disproportion of representation to voting population" (*id.* at 207), and the Court held that they suffered concrete injury to their voting power on that account. The claim of the plaintiffs here is quite different. As the district court acknowledged (Pet. App. 73a), their complaint has nothing to do with diminished representation or diluted voting power; hence, *Baker v. Carr*, *supra*, does not support their standing claim. Rather, they assert that they and their cause are at a disadvantage in the political arena, on the theory that the Church can lobby and conduct political activity with the aid of tax-deductible contributions, whereas abortion rights groups cannot. This assertion does not constitute the type of direct personal injury that can support Article III standing.

An injury can confer standing only if it "fairly can be traced to the challenged action of the defendant, and not \* \* \* [to] the independent action of some third party not before the court" and if it "is likely to be redressed by a favorable decision" (*Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. at 38, 41-42). Examination of the chain of causation here clearly indicates that the link between the challenged government action and plaintiffs' supposed disadvantaged status in the abortion controversy is too uncertain to support standing. As was the case in *Eastern Kentucky* (see 426 U.S. at 42-43), it is purely

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abortion, are "denigrated" by the tax-exempt status accorded to the Roman Catholic Church is indistinguishable from the assertion of "stigmatic" injury that this Court rejected as a basis for standing in *Allen v. Wright*, 468 U.S. at 754-756. Plainly, the plaintiffs' ability to minister to their congregations is not adversely affected by the challenged government conduct and would not be enhanced at all if the plaintiffs were to receive the relief they seek. If the district court's view were correct, any litigant could defeat the Article III limitations merely by asserting what cannot be disproved—that he suffers "denigration" as a result of the challenged action. See *Valley Forge*, 454 U.S. at 485-486.

speculative whether contributors to the Roman Catholic Church base their donation decisions in any significant way upon the tax implications of their contributions. And there is no basis for predicting how, if at all, a change in contribution level would affect the Church's alleged political activity. Moreover, in order to help respondents' cause, the relief requested would have to influence not only the conduct of the Church and its contributors, but also the decisions of voters. See *Wimpisinger v. Watson*, 628 F.2d 133, 138-139 (D.C. Cir.), cert. denied, 446 U.S. 929 (1980) (Kennedy supporters lack standing to challenge allegedly illegal expenditure of government funds to benefit Carter campaign). In short, the improvement of the plaintiffs' position in the abortion controversy depends upon the independent actions of numerous third persons not before the district court. Thus, the injury they allege is neither fairly traceable to the challenged government action nor likely to be redressed by the relief they seek (see *Allen*, 468 U.S. at 758).<sup>7</sup>

3. Quite apart from the fact that the plaintiffs' suit fails to meet the constitutional prerequisites for federal court jurisdiction, it is manifest that the plaintiffs lack standing under the prudential limitations on standing that have been identified by this Court. As in *Allen v. Wright*, *supra*, respondents seek to compel the Executive Branch to undertake a nationwide review of the activities of a tax-exempt organization in order to determine whether it continues to qualify for exemption. But suits challenging an Executive agency's enforcement program, even when "premised on allegations of instances of violations of

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<sup>7</sup> See also *American Society of Travel Agents, Inc. v. Blumenthal*, 566 F.2d 145 (D.C. Cir. 1977), cert. denied, 435 U.S. 947 (1978) (no "competitor" standing to challenge tax exemption of another); *Keane v. Baker*, Civ. No. 86-588E (W.D.N.Y. Mar. 6, 1987) (no "voter standing" to challenge tax exemption of organization allegedly engaged in political activities on behalf of a candidate).

law," are "rarely if ever appropriate for federal-court adjudication" (468 U.S. at 759-760). In the absence of an assertion of concrete and remediable injury directly attributable to unlawful government conduct, the courts do not assume the "amorphous [task of] general supervision of the operations of government" (*United States v. Richardson*, 418 U.S. 166, 192 (1974) (Powell, J., concurring)), nor act "as virtually continuing monitors of the wisdom and soundness of Executive action" (*Laird v. Tatum*, 408 U.S. 1, 15 (1972)). And, as the Court recently emphasized in another context, a suit to compel an agency to undertake a specific enforcement inquiry is particularly unsuitable for judicial resolution because "an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise" (*Heckler v. Chaney*, 470 U.S. 821, 831 (1985)).

The administration of the tax laws presents a particularly strong case for refusal by the courts to hear a claim like that being pressed by the plaintiffs because such a claim intrudes into a detailed structure erected by Congress to govern tax enforcement. Congress has delegated "the administration and enforcement of" the tax laws exclusively to the Secretary and the Commissioner (I.R.C. § 7801(a)), including the power to "prescribe all needful rules and regulations for the enforcement of" those laws (I.R.C. § 7805(a)). Congress has reserved to itself the task of overseeing the enforcement of the revenue laws by creating a Joint Committee on Taxation to investigate the administration, operation, and effects of the tax system (I.R.C. §§ 8001-8023). At the same time, Congress has established precisely-defined channels for the adjudication of tax disputes initiated by private parties—proceedings in the Tax Court to redetermine deficiencies (I.R.C. §§ 6212, 6213), refund or collection actions in the district courts or the Claims Court (I.R.C. §§ 6532, 7422; 28 U.S.C. 1346,

1491), and, in limited circumstances, declaratory judgment actions, e.g., by an organization seeking recognition of its own tax-exempt status under Section 501(c)(3) (I.R.C. § 7428). Apart from these avenues of relief, Congress has precluded "any person, whether or not such person is the person against whom such tax was assessed," from maintaining a "suit for the purpose of restraining the assessment or collection of any tax" (I.R.C. § 7421(a)), and has barred declaratory relief in all actions "with respect to Federal taxes" (28 U.S.C. (& Supp. III) 2201). This structure reflects a deliberate judgment that the vigor of the government's enforcement of the tax laws is generally not a matter for litigation instituted by private parties. In particular, Congress has determined that the invoking of judicial examination of the validity of a particular organization's tax exemption is the prerogative only of the government and the organization in question, not of third parties.

The specifics of this case graphically illustrate the mischief that would flow from conferring standing on persons such as the plaintiffs to challenge the tax exemption of a third party. At the behest of a litigant who is not directly affected, the district court is poised to conduct a nationwide review of the IRS's administration and enforcement of Section 501(c)(3), an inquiry that will intrude into the sensitive internal workings of both the government and the Roman Catholic Church. The Church includes many thousands of organizations across the country—parishes, dioceses, schools, hospitals, and others—that, for administrative purposes, fall under the "umbrella" exemption given to the USCC. The plaintiffs would have the district court substitute its judgment for the enforcement judgment of the IRS by reviewing the internal affairs of a multitude of those entities to determine whether they engage in more political activity than their



status under Section 501(c)(3) permits. Moreover, this inquiry would likely touch upon confidential tax return information collected by the IRS and result in constitutional controversy over efforts to obtain Church documents and to take testimony from Church officials. Such a judicial undertaking cannot properly be required, or justified, on behalf of litigants whose own tax liability is unaffected by the administrative action they seek to challenge.

Indeed, this lawsuit well illustrates the concern expressed by this Court over cases raising "questions of broad social import where no individual rights would be vindicated" (*Gladstone, Realtors v. Village of Bellwood*, 441 U.S. at 100). As an outgrowth of a debate over issues of social policy, the plaintiffs seek a declaration that the government has violated the law in failing to revoke the Church's tax exemption and an order directing the government to revoke the Church's tax exemption and to assess and collect back taxes due as a result of the revocation (C.A. App. 22-23). As a practical matter, however, the plaintiffs cannot obtain any such relief in this lawsuit, even if they prevail entirely on all their contentions on the merits. The Church was long ago dismissed as a party from this suit. If the district court were to enter an order directing the federal defendants to withdraw the Church's tax exemption and to assess back taxes, the Church would remain free to challenge the revocation in a declaratory judgment action under Section 7428 of the Code, or to challenge in normal fashion any deficiency asserted, either by filing a petition in the Tax Court or by filing a refund suit in district court. Because the Church is not a party to the underlying litigation here, the district court's decision would have no res judicata or collateral estoppel effect in later litigation. Thus, far from ending the matter, a ruling here in the plaintiffs' favor would not resolve the validity of the Church's tax exemption; it would only act as a catalyst to further litigation in another forum.

In sum, the plaintiffs in this suit are essentially seeking to exercise control over the Executive Branch's allocation of its law enforcement responsibilities, not to obtain a binding resolution of a specific legal question in which they have a cognizable interest. As this Court stated in *Allen*, "[r]ecognition of standing in such circumstances would transform the federal courts into 'no more than a vehicle for the vindication of the value interests of concerned bystanders'" (468 U.S. at 756, quoting *United States v. SCRAP*, 412 U.S. 669, 687 (1973)). This Court has made clear that litigants may not resort to the federal courts for such a purpose, and it is appropriate for the Court to intervene here to put a halt to this unwarranted judicial intrusion into executive functions.<sup>8</sup>

#### CONCLUSION

The petition for a writ of certiorari should be granted.  
Respectfully submitted.

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OCTOBER 1987

<sup>8</sup> Moreover, permitting the present case to proceed to trial would encourage similar suits by third parties dissatisfied with the tax treatment of other groups with whose views they disagree. Even if such suits would ultimately fail on the merits, they could be used for purposes of securing information through discovery for utilization in public debate, as well as a means of turning the courts themselves into fora for policy debate rather than adjudicative tribunals.